

# News Release

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## **Services Solicit Public Comment on Proposed Revisions to Endangered Species Act Implementation Regulations**

*Use of “surrogates” to measure incidental take would improve program’s implementation, decrease unnecessary regulatory burden and costs*

In order to make the implementation of the Endangered Species Act (ESA) more effective and less burdensome, the U.S. Fish and Wildlife Service and the National Oceanic and Atmospheric Administration’s National Marine Fisheries Service (the Services) are proposing to amend regulations governing Incidental Take Statements (ITS) for endangered species.

An ITS describes the amount or extent of “incidental take” of a threatened or endangered species (e.g., harm to that species) that is anticipated to result from an action by a federal agency. ITSs are produced by the Services as part of a biological opinion resulting from consultations with the federal agency under Section 7 of the ESA.

The Services are proposing to change the regulations that implement Section 7 to codify the use of a surrogate, in appropriate circumstances, to express the anticipated amount or extent of take. The changes will also allow for flexibility in how the Services prepare ITSs in situations where assessing and monitoring take of endangered and threatened species may be extremely difficult, time-consuming or expensive.

The Services have found that in many cases, the biology of a listed species or the nature of the proposed action makes it impractical to detect or monitor take of individual animals. Additionally, impact to some species may not be in the form of direct or immediate harm to individuals, but rather a decrease in biological fitness due to reduced ability to breed or shortened lifespan. In these cases, evaluating impacts to a “surrogate” (e.g., habitat, ecological condition or similarly affected species) may be the most reasonable and meaningful way to describe the amount or extent of anticipated take of listed species.

“The endangered species act is a critical safety net for the nation’s fish, wildlife and plants, and to date has prevented the extinction of hundreds of imperiled species, as well as promoting the recovery of many others,” said Gary Frazer, the Fish and Wildlife Service’s Assistant Director for Ecological Services. “We welcome comment on this proposal as we take steps to strengthen the implementation of the ESA by improving conservation effectiveness, reducing administrative burden, enhancing clarity and consistency for impacted stakeholders and agency staff, and encouraging partnerships, innovation and cooperation.”

The Services are further proposing to codify the use of Programmatic Incidental Take Statements for ongoing or long-term federal actions. Programmatic Incidental Take statements would be authorized for use in situations where a programmatic action undergoing Section 7 consultation, such as a federal land use plan, is described in such general terms that the amount or extent of incidental take of a species cannot reasonably be measured, but where subsequent “step-down” consultations on individual actions will occur where incidental take can be quantified.

These changes are meant to clarify and codify the current policy of the Services regarding the use of surrogates, and to address recent court decisions related to ITSs for programmatic federal actions.

The rule is consistent with Executive Order 13563, which calls for a retrospective analysis of existing rules to make the agency’s regulatory program more effective and less burdensome in achieving the regulatory objectives, and was included in the Department of the Interior’s [\*Final Plan for Retrospective Regulatory Review\*](#).

For more information on the proposal, please visit [www.fws.gov/endangered/improving\\_ESA/ITS.html](http://www.fws.gov/endangered/improving_ESA/ITS.html).

The proposed rule will publish in the *Federal Register* in the next few days and will be available to the public at [www.regulations.gov](http://www.regulations.gov). The *Federal Register* publication of this notice will also be available at [www.fws.gov/policy/frsystem/default.cfm](http://www.fws.gov/policy/frsystem/default.cfm) by clicking on the 2013 Proposed Rules link under Endangered and Threatened Wildlife and Plants.

The Services are accepting comments for 60 days from the date of publication in the *Federal Register*. All public comment must reference the *Federal Register* docket number. The Service’s will make this number available at [www.fws.gov/endangered/improving\\_ESA/ITS.html](http://www.fws.gov/endangered/improving_ESA/ITS.html) as soon as it is designated. Written comments and information can be submitted by one of the following methods:

- Electronically: Use the federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov). Follow the instructions for submitting comments to the designated docket number
- U.S. mail or hand-delivery: Public Comments Processing, [INSERT DOCKET NUMBER]; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203

The Services intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible.

Comments and materials, as well as supporting documentation used in preparing the proposed rules, will be available for public inspection at [www.regulations.gov](http://www.regulations.gov) under the above docket number. In addition, details on the kinds of information the Service is seeking are available in each proposed rule.

The Services will post all comments on [www.regulations.gov](http://www.regulations.gov). This generally means the agency will post any personal information provided through the process. The Services are not able to accept email or faxes.

The Service is actively engaged with conservation partners and the public in the search for improved and innovative ways to conserve and recover imperiled species. To learn more about the Endangered Species Program, visit [www.fws.gov/endangered](http://www.fws.gov/endangered).

*NOAA's mission is to understand and predict changes in the Earth's environment, from the depths of the ocean to the surface of the sun, and to conserve and manage our coastal and marine resources. Join us on Facebook, Twitter and our other social media channels at [www.noaa.gov/socialmedia](http://www.noaa.gov/socialmedia).*

*The mission of the U.S. Fish and Wildlife Service is working with others to conserve, protect and enhance fish, wildlife, plants and their habitats for the continuing benefit of the American people. We are both a leader and trusted partner in fish and wildlife conservation, known for our scientific excellence, stewardship of lands and natural resources, dedicated professionals and commitment to public service. For more information on our work and the people who make it happen, visit [www.fws.gov](http://www.fws.gov). Connect with our Facebook page at [www.facebook.com/usfws](http://www.facebook.com/usfws), follow us on Twitter at [www.twitter.com/usfwshq](http://www.twitter.com/usfwshq), watch our YouTube Channel at [www.youtube.com/usfws](http://www.youtube.com/usfws) and download photos from our Flickr page at [www.flickr.com/photos/usfwshq](http://www.flickr.com/photos/usfwshq).*

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